

Award No. 4924
Docket No. 4767
2-PRR-BK-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Blacksmiths)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Current Agreement Blacksmith Helper N. F. Beckel was improperly compensated for operating the Furnace for the 4000 lb. Drop Hammer at Smith Shop #2-Altoona Heavy Repair Shop, Altoona, Pennsylvania.

2. That accordingly the Carrier be ordered to additionally compensate Mr. N. F. Beckel the difference between "P" + 6¢ grade rate and the "F" grade Mechanic rate.

EMPLOYEES' STATEMENT OF FACTS: N. F. Beckel, hereinafter referred to as the claimant, owned a job as a blacksmith helper, first shift in Smith Shop #2 at the Altoona Heavy Repair Shops. The duty of this position was to operate the furnace for the 4000 lb. drop hammer.

Three drop forge operations are located in Smith Shop #2 each operation consists of a drop forge hammer and a furnace. They are spaced approximately ten (10) feet apart.

Two of the drop hammers are of the 6000 lb. classification, each employing one "F" grade furnace operator.

One of the drop hammers is of the 4000 lb. classification, employing one "F" grade blacksmith and one "P" plus 6¢ grade blacksmith helper.

All three furnaces are similar in size and similar to operate and maintain, and are used to heat various metals in connection with the manufacturing of locomotive and car parts (drop forgings).

This dispute has been handled with all officials of the Pennsylvania Railroad, hereinafter referred to as the carrier, designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustments.

Therefore, the carrier respectfully submits that your honorable board should dismiss or deny the claim of the organization in this matter.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On April 25, 1961, the following Claim was presented to the Claimant's Foreman:

"I hereby present time claim in favor of Blacksmith Helper N. J. Beckel for the difference of Helper's rate and Furnace operator's rate for April 26, 1961, and all other days thereafter until this case is settled. Mr. Beckel is required to operate furnace in SS #2 for drop hammer at helper's rate although the upgraded work classification has the position as a Mechanic position."

That Claim was progressed as far as Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. In denying the claim on December 7, 1961, the Manager made the following statement:

"The record in this case shows that this claim was denied by the Superintendent of Personnel on May 22, 1961, and was not listed with the undersigned until October 30, 1961, which is beyond the time limits provided in Article V, Section 1, of the August 21, 1954, Agreement, and our willingness to discuss this case should not be construed as a waiver of those rights under Article V."

That claim was then dropped. However, in the meantime, the Local Chairman attempted to reinstate the claim with Claimant's Foreman under date of November 27, 1961, as follows:

"I hereby present time claim in favor of Blacksmith Helper N. F. Beckel for the difference of rate of Helper's rate to Furnace operator's rate from Nov. 1, 1961, and all other days thereafter until this case is settled.

Mr. Beckel is required to operate furnace in SS #2 for drop hammer at helper's rate although the graded work classification has the position covered as a Mechanic position."

It will be observed that the only difference in the two claims is the date from which payment was to commence, it being a continuing claim. Otherwise they are identical.

The second Claim was processed to the Manager who under date of January 10, 1964, denied the claim which included the following statement:

"In the instant case, a claim is presented in behalf of Blacksmith Helper N. F. Beckel for payment of the 'F' Grade rate for

operating the furnace incident to the 4000# drop hammer in Smith Shop No. 2. It is, in substance, the same claim that was filed on August 19, 1952, and denied by the Works Manager on December 2, 1952, and again filed on April 25, 1961, and denied in System Docket No. 3116 on December 7, 1961.

Consequently, the handling of this claim is without prejudice to the Company's argument with respect to any further progression of such claim that the instant case is barred as the denial of the original claims form the basis of complaint and any subsequent refiling of these claims is not permitted by Rule 4-0-1 (C) (3)."

The pertinent portion of Rule 4-0-1 (B), which is a recapitulation of Section 3 (b), Article V of the National Agreement of August 21, 1954, is quoted below:

'4-0-1 (B) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances."

It is apparent that Carrier did not waive its jurisdictional objection to the handling of the Claim by this Board. It is also quite significant that in Employes' first Submission no reference was made to Carrier's contention that the Claim was barred by the time limitation contained in Rule 4-0-1 of the Agreement though it was raised on the property.

When this matter became closed because of Employes' failure to comply with Rule 4-0-1(B) of the Agreement, they were not privileged to again open it up merely by starting a new claim about the time that the old claim became invalid. This Rule does not permit the refiling of claims that have previously become barred even though they are alleged continuing violations. The two claims presented were identical claims and not a "similar claim or grievance" within the meaning of 4-0-1(B).

This Claim is not properly before this Board due to the failure of the Organization to comply with either Rule 4-0-1(B), or the National Agreement of August 21, 1954, on which it is based, in that a proper appeal was not made within sixty days as required.

See Award 2177 (Wenke); Third Division Awards 9447 (Johnson), 10251 (McDermott), 10329 (Begley), 10453 (Wilson).

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1966.

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